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SULTZMAN, CLERK
APACHE COUNTY SUPERIOR COURT

to do justly, to love mercy, and to walk humbly with God Micah 6:8

IN THE SUPERIOR COURT, STATE OF ARIZONA
APACHE COUNTY, JUVENILE DIVISION

In the Matter of)	
)	Case No JV 2008-065
Christian Ryan Romero)	
)	Objection to Motion to Dismiss Without Prejudice
)	
A person under 18 years)	
)	

The Juvenile, through counsel and pursuant to the following authority, objects to the government's motion to dismiss Count 1 of the Delinquency Petition without prejudice, as the interest of justice will not be served thereby. Defense does not object to a dismissal **WITH** prejudice of either count.

In the present case the government moved to dismiss Count 1 of the Petition without prejudice claiming it would be in the interests of justice to do so. A dismissal without prejudice will not serve the Juvenile's interest in justice, rather it will allow the government to retain Count 1 for re-filing, in the event it cannot obtain a delinquent adjudication on Count 2.

It appears the only reason the government is moving to dismiss one of the counts in the Petition is to gain a tactical advantage, which would certainly prejudice Christian were the government to re-file that Count when the Juvenile turned fifteen (15) years of age and attempted to prosecute him as an adult. This move allows the government to keep Christian in custody during the pending juvenile adjudication on Count 2, as well as

preserve its option to charge him as an adult at a later date for Count 1, without having to file a motion to transfer him to adult court and risk having that motion denied. This is clearly tactical and advantageous for the government. The resulting prejudice for the Juvenile is significant. If the two counts proceed in Juvenile Court his maximum exposure is incarceration until he is 18 years of age, however if the Court allows the government to dismiss Count 1 Christian could be placed in custody for the rest of his life, if prosecuted and convicted as an adult. This is prejudice at its best.

In *State v. Hall*, 129 Ariz. 589, 633 P.2d 398 (1981) the adult court held that a prosecutor's "intentional delay to harass or gain a tactical advantage... will justify a dismissal with prejudice." See also, *State v. Gilbert*, 172 Ariz. 402, 405, 837 P.2d 1137, 1140 (Ariz.App. Div. 1, 1991). Counsel would request the Court inquire from the government as to the basis for its request to dismiss only Count 1 without prejudice and determine whether it is to gain a tactical advantage by the government. It is further requested the Court make findings as to the prejudice to the Juvenile were the dismissal without prejudice granted. If the request is to gain a tactical advantage and resulting prejudice occurs, this Court is authorized to dismiss Count 1 with prejudice.

The prosecuting attorney does not have sole authority to dismiss charges against a defendant, but, rather, the prosecuting attorney's role is limited to recommending to the Court that the case be dismissed. Any agreement exceeding such limited scope of authority would be void and unenforceable. *State v. Johnson*, 122 Ariz. 260, 594 P.2d 514 (1979); *Application of Parham*, 6 Ariz.App. 191, 431 P.2d 86 (App. 1967). Counsel understands this is not adult court, however it would seem that this rationale would apply to juvenile proceedings as well.

It is evident that the government is moving to dismiss Count 1 to gain a tactical advantage, which greatly prejudices the Juvenile. Counsel would request the Court deny the motion to dismiss without prejudice as the government has failed to set forth the interests of justice that will be served by said dismissal, or in the alternative dismiss Count 1 with prejudice

Respectfully Submitted this 24 day of November, 2008, by

Benjamin M. Brewer for
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Copies mailed this 24 day of
November, 2008, to:
Judge Roca
Mr. Carlyon, Apache County Attorney
Client